

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KELCEY DEPTULA,

Plaintiff,

-v-

JONATHAN ROSEN and CERAMICA DE ESPANA,

Defendants.
----- X

20 Civ. 2371 (JPC)

ORDER ADOPTING
REPORT AND
RECOMMENDATION

JOHN P. CRONAN, United States District Judge:

Plaintiff Kelcey Deptula initiated this action on March 17, 2020. She asserts several state law claims against Defendants Jonathan Rosen and his alleged business, Ceramica de Espana, on the basis of diversity jurisdiction: (1) practicing medicine without a license, (2) sexual battery, (3) negligent infliction of emotional distress, (4) fraud, (5) breach of contract, and (6) quantum meruit (*i.e.*, seeking fair value for her services). Dkt. 3. Defendants have moved to dismiss pursuant to Rules 12(b)(2), (3), (5), and (6) of the Federal Rules of Civil Procedure. Dkt. 29. On August 13, 2021, the Honorable Barbara C. Moses issued a Report and Recommendation, recommending that the motion be granted without prejudice pursuant to Federal Rule of Civil Procedure 12(b)(5) for failure to effect proper service of process. Dkt. 58.

A district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge” in a Report and Recommendation. 28 U.S.C. § 636(b)(1)(C). If a party submits a timely objection to any part of the magistrate judge’s disposition, the district court will conduct a *de novo* review of the contested section. Fed. R. Civ. P. 72(b)(3); *see also United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). If no

objections are made, the Court reviews the Report and Recommendation for clear error. *See, e.g., Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

The Report and Recommendation, citing both Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1), advised the parties that they had fourteen days from service of the Report and Recommendation to file any objections, and warned that failure to timely file such objections would result in waiver of any right to object. Dkt. 58 at 21. No party filed any objections, and the time for making any objections has passed. The parties have therefore waived the right to object to the Report and Recommendation or to obtain appellate review. *See Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *see also Caidor v. Onondaga Cnty.*, 517 F.3d 601, 604 (2d Cir. 2008).

Notwithstanding this waiver, the Court has conducted a *de novo* review of the Report and Recommendation, and finds it to be well reasoned and its conclusions well founded. Accordingly, the Court adopts the Report and Recommendation in its entirety.

SO ORDERED.

Dated: September 3, 2021
New York, New York



JOHN P. CRONAN
United States District Judge